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REMARKS

The Office Action dated 11 March 2005 has been reviewed, and the comments of the U.S. Patent Office have been considered. Claims 1, 16, 18 and 19 have been canceled without prejudice or disclaimer, claims 2, 17, 20 and 22-30 are currently amended, and claims 3-15 and 21 remain as originally presented. Thus claims 2-15, 17 and 20-30 are submitted for reconsideration.

Before turning to the substantive issues presented by the Office Action, it is respectfully noted that there is a discrepancy between the documents discussed in the Office Action and the listing of documents on the Form PTO-892 that accompanied the Office Action. Specifically, the Office Action discusses U.S. Patent No. 3,260,504 to Mojonnier et al. ("Mojonnier"), but this document is not listed on the Form PTO-892. Please indicate whether or not Mojonnier is being placed of record in the present application.

The numbering of the claims was objected to in the Office Action. In accordance with the Examiner's helpful suggestions, claims 20, 21, 21 and 22-29 as originally filed have been renumbered as claims 20-30, and the dependency of renumbered claims 23, 26, 27, 29 and 30 have been updated accordingly. It is respectfully submitted that the objections to the claims have been overcome by the revised claim numbering and the revised dependencies, and therefore the objections to the claims should be withdrawn.

So as to try to avoid further confusion, henceforth these Remarks will be directed to the claims as renumbered.

Claims 17 and 30 were rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite. Specifically, the Office Action states that "the recitation of 'infinitely variable' renders the claim indefinite, since it is not clear that the plurality of intermediate configurations is considered to be infinitely variable." These rejections are respectfully traversed in view of the following comments. Rather than the plurality of intermediate configurations being infinite, it is respectfully submitted that claims 17 and 30 recite that the movement of the valve (claim 17) or the proportioning (claim 30) are infinitely variable. Thus, the plurality of intermediate configurations may be a finite set of examples of the infinitely variable movement/proportioning.

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For at least these reasons, it is respectfully submitted that the rejections under 35 U.S.C. § 112, second paragraph, of claims 17 and 30 should be withdrawn.

Claims 1-10 and 16-19 were rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 5,184,773 to Everingham. Claims 11-15 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Everingham in view of U.S. Patent No. 4,026,464 to Doherty, Jr. ("Doherty"). Claims 20, 21 and 24-30 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 4,516,401 to Jackson in view of Everingham. And claims 22 and 23 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Jackson in view of Everingham, and further in view of Doherty. It is respectfully submitted that the rejections of claims 1, 16, 18 and 19 are moot in view of the cancellation of these claims. Otherwise, the rejections are respectfully traversed in view of the following comments.

Independent claim 20, which was amended solely to ensure antecedent support for the features of claim 22, recites a fluid flow controller including, *inter alia*, "a first fluid flow path passing air from the turbocharger through the inlet port, through the chamber and out the first outlet port to the wastegate;" "a second outlet port providing fluid communication between the chamber and the atmosphere, a second fluid flow path passing air from the turbocharger through the inlet port, through the chamber and out the second outlet port to the atmosphere;" and a valve being movable with respect to the body between a "a first configuration substantially occluding the second fluid flow path and permitting generally unrestricted fluid flow along the first fluid flow path" and a "second configuration substantially occluding the first fluid flow path and permitting generally unrestricted fluid flow along the second fluid flow path." Independent claim 25 recites a system of boosting atmospheric air density that also includes, *inter alia*, similar features. And independent claim 28 recites a method of controlling a wastegate that includes, *inter alia*, "providing a first portion of the air supplied from the turbocharger to the fluid flow controller;" "discharging to the atmosphere a second portion of the air supplied from the turbocharger to the fluid flow controller;" and "proportioning the first and second portions of the air." Support for these combinations of features may be found in Applicant's specification as originally filed at, for example, paragraphs 0017, 0022 and 0027.

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In contrast, Jackson shows a solenoid valve 47 that, in a sufficiently open position, will deliver to a pressure chamber 46 a pressure that urges a diaphragm 42 against the force of a spring 43, so as to move a wastegate valve 38 in an opening direction. See Jackson at column 3, line 67, to column 4, line 5. Jackson also shows a bleed orifice 50 that is sufficiently smaller than a control orifice 48, and are respectively downstream and upstream of the solenoid valve 47, to "permit substantially full charging pressure to be delivered to the pressure chamber 46 without being seriously reduced by the bleed flow through the orifice 50" (column 4, lines 9-14). Thus, according to Jackson, varying the opening of the solenoid valve 47 will vary operation of a wastegate actuator 40, regardless of inlet and outlet pressures on either side of a turbocharger compressor 27. See Jackson at column 4, lines 15-34.

Therefore, it is respectfully submitted that Jackson fails to teach or suggest each and every feature of recited in Applicant's independent claims 20, 25 and 28. For example, Jackson fails to teach or suggest alternative valve configurations that occlude different flow paths (as recited in Applicant's independent claims 20 and 25); proportioning an air supply between two air portions (as recited in Applicant's independent claim 28); and discharging to atmosphere a portion of air supplied by a turbocharger (as recited in Applicant's independent claims 20, 25 and 28).

The Office Action relies on Everingham "to dispose the valve head (60) in the chamber" and "the valve being movable with respect to the body between a first configuration, a second configuration, and a plurality of intermediate configurations." However, it is respectfully submitted that even if Everingham's heater control valve could be combined with Jackson's intake charge control system, a proposition that Applicant does not accept, the combination would still fail to teach or suggest Applicant's claims for at least three reasons. First, there is no suggestion as to how Everingham's valve would be connected to the Jackson's ducts - Everingham shows three ports 14,16,18 whereas Jackson shows only two ducts 31,32. Second, Jackson's charge control system is directed to charge pressure control that is independent of pressures variations in the low pressure intake duct 31 and the high pressure intake duct 32, whereas Everingham is directed to diverting coolant flow to a heater core (See Everingham at column 4, lines 29-37). And third, neither Jackson nor Everingham teach or suggest that a

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portion of the fluid flows being controlled be discharged to atmosphere - Jackson shows a closed air flow between the ducts 31,32 and Everingham is directed to a recirculating flow of coolant.

For at least any of the above reasons, it is respectfully submitted that neither Jackson nor Everingham, whether considered individually or in combination, teach or suggest the combinations of features recited in Applicant's independent claims 20, 25 and 28. Thus, the rejections under 35 U.S.C. § 103(a) of claims 20, 25 and 28 should be withdrawn, and it is respectfully submitted that these claims are allowable over the applied prior art.

While not applied against any of Applicant's independent claims, the Office Action relies on Doherty to allegedly suggest particular structural details of a valve head. It is respectfully submitted that Doherty fails to overcome the aforementioned deficiencies of Jackson and Everingham.

Claims 2-15, 17, 21-24, 26, 27, 29 and 30 depend, directly or indirectly, from one of the independent claims 20, 25 and 28, and therefore recite the same allowable combinations of features, as well as reciting additional features that further distinguish over the applied prior art. Thus, it is respectfully submitted that the rejections under 35 U.S.C. §§ 102(b) and 103(a) of claims 2-15, 17, 21-24, 26, 27, 29 and 30 should be withdrawn, and that these claims also are allowable over the applied prior art.

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CONCLUSION

In view of the foregoing amendments and remarks, Applicant respectfully requests reconsideration of this Application and the prompt allowance of claims 2-15, 17 and 20-30.

Should the Examiner feel that there are any issues outstanding after consideration of this response, the Examiner is invited to contact the undersigned to expedite prosecution of the application.

EXCEPT for issue fees payable under 37 C.F.R. § 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. §§ 1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account 08-1641. **This paragraph is intended to be a CONSTRUCTIVE PETITION FOR EXTENSION OF TIME** in accordance with 37 C.F.R. § 1.136(a)(3).

Respectfully submitted,

Date:

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